



ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Jason H. Hilborn
Assistant Solicitor General

PL-01, The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300
Fax (850) 410-2672
jason.hilborn@myfloridalegal.com

September 8, 2021

VIA CM/ECF

Mr. David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Re: No. 21-11715, *State of Florida v. United States, et al.*

Dear Mr. Smith:

I write in response to the Court's August 19, 2021 order directing the parties to file supplemental letter briefs on whether the "Interim Guidelines" in the Department of Homeland Security memoranda at issue here have "been changed or modified" and if a "revised or anticipated schedule for issuance of new enforcement guidelines" existed.

On January 20, 2021, DHS issued the "interim priorities" at issue, and on February 18, it clarified those priorities. In the February 18 memo, the government represented that it anticipated that it would issue its new priorities by May 19. DE 4-4, at 2. On May 18, the day before that deadline, the district court denied Florida's motion for preliminary injunction, in part because it believed that "the prioritization scheme here is short-term guidance with the anticipation of new guidelines within 90 days of February 18, 2021." *Florida v. United States*, --- F. Supp. 3d ---, 2021 WL 1985058, at *9 (M.D. Fla. May 18, 2021).

Florida immediately appealed and moved to expedite, consistent with 28 U.S.C. § 1657(a), which requires the federal courts to "expedite the consideration of . . . any action for temporary or preliminary injunctive relief." The earliest oral argument date available, however, was September 24, 2021. Since that time the government has extended its deadline to issue new priorities at least three times. *See, e.g., Arizona v. DHS*, 2:21-cv-00186, DE 85, at 2 (D. Ariz. June 7, 2021) ("beginning of July"); *Texas v. United States*, 6:21-cv-00016, DE 63, at 3-4 (S.D. Tex. June 28, 2021) ("end of August or the beginning of September"); Appellees' Aug. 30, 2021 Supp. Letter ("end of September").

The government's conduct here underscores the serious flaws with the district court's approach. Buoyed by a district court decision that relied on the "interim" character of its guidelines to hold it immune from judicial scrutiny, the government has now extended

those unlawful policies for what will be at least eight months, all the while continuing to cause Florida irreparable harm. Florida therefore respectfully requests a ruling as soon as possible following oral argument.

Sincerely,

/s/ Jason H. Hilborn
Jason H. Hilborn
Assistant Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 414-3300
(850) 410-2672 (fax)
jason.hilborn@myfloridalegal.com

cc (via CM/ECF):

H. Thomas Byron III
Michael Shih
Sean Janda
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530
202-514-3388
sean.r.janda@usdoj.gov